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Current Topics.

The Ministry of Health.

In presenting the Sixteenth Annual Report of the Ministry of Health, which is concerned with the years 1934-35, the opportunity has been taken to indicate in brief outline some of the main developments which have taken place in the services now within the responsibility of that department during the twenty-five years of His Majesty's reign. Under the Act of 1919, to which the Ministry owes its existence, the powers of the National Health Insurance Commissioners and of the Local Government Board, which had been the central authority for a large number of local government services, were vested in the new department, provision being made also for the transfer thereto of a number of health services previously within the purview of other departments. The development of the Ministry's activities is traced under three heads, national health and pensions insurance, local government organisation, and local government services operated under the control of the Ministry. Instructive figures relating to the second of these divisions illustrate the growing expenditure of local authorities in respect of services committed to their charge. It is pointed out that the total expenditure (including expenditure from Exchequer grants and for capital purposes) has increased from £147,000,000 in 1910–11 to £507,000,000 in the last completed year of account. The following examples show the number of million pounds expended on various services during the year 1932–33, the corresponding figure for 1910–11 being shown in brackets: education 83 (29), highways, etc. 47 (15), public assistance 33 (13), public health 46 (12), housing 39 (1). Reference is made to the changes brought about by the Local Government Act, 1929, particularly in regard to the poor law, the financial relations between the local authorities and the Exchequer, and to the duty imposed by the Act upon the county councils to survey their districts, while the consolidating provisions of the Poor Law Acts of 1927 and 1930, and of the Local Government Act, 1933, are also alluded to. It is stated that the work of similarly amending and clarifying the numerous statutes on public health is at present in hand.

Progress in Services.

Turning to particular matters, the Report records the progress which has been made in the environmental health services (housing, planning and water supply) and in what are described as the personal health services, which relate to tuberculosis, maternity and child welfare, general institutional provision, the blind, mental treatment and mental deficiency. With regard to public assistance it is stated that the question what changes should be made in the present law to fit it better to modern conditions has been exhaustively studied since the transfer of the Guardians' functions by the Act of 1929 by a committee of the County Councils Association and the Association of Municipal Corporations. Pending experience of the results on public assistance administration of the establishment in 1934 of the Unemployment Assistance Board, it has been thought better to defer consideration of amending legislation. The Report, which also deals with the question of further medical education, the advances of medical knowledge, and international health organisations, concludes with figures relating to the standardised death rate and to changes in mortality which may be attributed in part to the operation of public preventive and clinical services. The following may be quoted as indicative of the general position: "... what it has been possible to state in this brief summary should be sufficient to show that Your Majesty's reign has been one of very signal development and improvement in many directions, valuable in themselves and so conceived as to lay sound foundations for further progress." The foregoing is but an introduction to a volume of 350 pages, packed with statistical and other matter into which it is impossible to enter at this juncture. Attention should, however, be drawn to the admirable survey of public health services in London which forms a fitting companion to the survey of the public health services maintained by county and county borough councils contained in the Ministry's Report for 1933-34. It may be well to indicate for those unfamiliar with these reports that the volume is divided into six parts dealing respectively with public health, housing and town planning (the latter including country planning), local government and local finance, administration of the poor law, etc., national health insurance and contributory pensions, and the Welsh Board of Health. This year there are forty appendices. The Report (Cmd. 4978) is obtainable at the Stationery Office, price 5s. 6d. net.

Rural Water Supply.

Recent legislation, prompted by last year's drought, has gone some way to obviate difficulties attendant upon the provision of a proper supply of water to rural areas. Thus, the Rural Water Supplies Act, 1934, which empowers the

Minister of Health to contribute towards expenses to be incurred by local authorities in providing or improving water supplies in rural areas, and the Supply of Water in Bulk Act, 1934, which empowers water undertakers to give and to take water supplies in bulk, have been supplemented by the Water Supplies (Exceptional Shortage Orders) Act, 1934, which authorises the Minister of Health and the Home Secretary to make orders and give directions with a view to meeting deficiencies in water supplies due to exceptional shortage of rain. But it will be generally agreed that the foregoing provisions are in the nature of palliatives: the last-named statute continues in force only until the end of the present year and provision will shortly have to be made to put the matter of rural water supplies on a more satisfactory basis. It is important, however, in this connection, neither to underestimate the hardships to which the inhabitants of certain districts are subjected in times of shortage, nor to overstate the extent of the difficulty. Evidence given before the Joint Select Committee on water resources and supplies, which has adjourned until after the Parliamentary recess, suggests that for 80 per cent. of the population the situation is entirely satisfactory. This evidence was given by Sir ALBERT ATKEY, a past President of the British Waterworks Association, and Chairman of the Nottingham Corporation Water Committee, who referred to the scare based on shortage of water in rural areas and said that those areas, generally speaking, had not been supplied with pipe water because (*a*) they had never asked for it, or (*b*) did not want it except on rare occasions, or (*c*) were unable or unwilling to pay for it. The same witness, however, expressed the opinion that there was urgent need for the revision of legislation to conserve and protect water supplies in the country. The advisory committee on water supply set up by the Ministry of Health was, it was stated, a happy combination of men of high technical skill and men with considerable experience in public life and administration, and if the Select Committee recommended the translation into legislation of the advisory committee's recommendations, it would perform a very useful service.

Revision of Legislation.

A MEMORANDUM submitted on behalf of the Institution of Civil Engineers and the Association of Consulting Engineers suggested that one matter in regard to the revision of existing legislation would be of material assistance in the allocation of supplies, particularly in rural areas. At the moment, no water undertaker can be compelled to afford a supply, even within its limits of supply, unless the ordinary rates and charges from property already in existence amount to a certain percentage of the cost of the necessary main. It was urged that there should be definite provisions to enable the laying of mains to be enforced upon prescribed conditions. While no undertaker should be forced to supply outside its limits to the detriment of its own consumers, if it had available water, there should be some procedure by which a neighbouring authority could secure the use of it on equitable terms. Sir ARTHUR ROBINSON, Permanent Secretary to the Ministry of Health, said that the Ministry had been conscious for a very considerable time that legislation dealing with water supplies needed bringing up to date. The possibility of conflict between water undertakers and others, such as riparian owners and industry, was, however, envisaged, and when the points of conflict had been ascertained the Ministry wanted the advice of an impartial body such as the committee in regard to their solution. Then they could proceed to draft a Bill. Among the questions to be considered were the control of underground water supplies and matters affecting organisation, such as whether there should be power to secure the appointment of regional committees (now only voluntary) and whether the powers of the central authority should be amended or expanded. In reply to a question Sir ARTHUR made it clear that it was not the drought which had made legislation necessary. Legislation was long overdue. He also indicated that, subject to the state of Parliamentary business, the Ministry of Health has in mind the introduction of a Bill next year. Definite progress in the preparation and carrying out of rural schemes is, however, recorded under existing facilities by the Ministry of Health Report for 1934-35, to which extended reference is made on the previous page. Up to the middle of last July grants exceeding £600,000 have been provisionally allocated in respect of schemes for some 1,100 parishes of a total estimated capital cost of £3,856,000, and it is indicated that county councils and rural district councils generally are playing their part well in contributing to the cost of schemes. Loans sanctioned by the Ministry for rural water supplies during the period 1934-35 reached a record total of approximately £1,013,000, which compares favourably with the previous year's total of £391,000 and with the previous highest figure of £917,000 (for 1931-32).

Buying in Bulk.

THE Committee on the Standardisation and Simplification of the Requirements of Local Authorities, which was appointed in January, 1932, as the result of a conference of representatives of the associations of local authorities called at the Ministry, recently issued a Second Report (Stationery Office, price 6d.) dealing with the advantages of bulk purchase in relation to the multifarious requirements of local authorities. The Committee, which includes representatives of the Association of Municipal Corporations, the County Councils Association, the Urban District Councils Association, the Rural District Councils Association, and the Metropolitan Boroughs' Standing Joint Committee, after a lengthy discussion of the relevant issues in which it is impossible to enter here, comes to the following conclusions: bulk purchase, if accompanied by standardisation and simplification, enables better goods to be bought for less money; the system cannot be operated with maximum success unless the requirements of the buying unit are large enough to command large-scale buyer's terms and to employ experienced staff; local authorities might with advantage co-ordinate their requirements and/or combine with other local authorities and so create a buying unit of appropriate size; for small local authorities combination with a larger neighbour is likely to prove most effective, not only because of the magnitude of their joint requirements but also because of the advantage of employing the larger authority's technical staff; co-operation operates to the advantage of both the larger and the smaller local authorities. Moreover, it is stated, co-operation between local authorities of different types is not unprecedented and is already employed successfully, and in every case in which a local authority has co-ordinated its buying arrangements or co-operated with other authorities for the purposes of buying, the arrangements have endured and have, indeed, been extended in scope. On the subject of its continued usefulness the Committee refers to the fact that one of the purposes for which it was appointed was to collate information with regard to standardisation, simplification and bulk purchase with a view to assisting local authorities to secure the advantages to be derived from the application of these principles. It was not suggested that its functions in that regard were to be governed by a limit of time. "While therefore we feel," the report continues, "that, with the presentation of this report, we have for the moment discharged our function as a Committee to make recommendations of principle, we may still have usefulness as an advisory committee in touch with local authorities and charged to assist them in the directions we have indicated." All local authorities which already practise co-ordinated or co-operative buying are, accordingly, asked to supply the secretary of the Committee with particulars of their organisations, while any authority experiencing difficulty in giving effect to the Committee's recommendations is asked similarly to communicate the nature of its troubles.

Imprisonment for Debt in High Court Proceedings.

IMPRISONMENT for debt has been much discussed of late, and, as usually happens when a legal topic is much discussed, much misunderstood. A statement made last term by Mr. Justice Luxmoore (79 SOL. J. 489, 490) should do much to remove these misconceptions, so far as High Court proceedings are concerned, and to make clear the nature of the jurisdiction of the High Court upon judgment summonses, the conditions of its exercise, and the rules of practice by which it is governed.

The jurisdiction of the court on judgment summonses depends upon s. 5 of the Debtors Act, 1869. Section 4 abolished, subject to certain exceptions, the old kind of imprisonment for debt, which had made the Fleet notorious, and been satirized by Dickens in the adventures of Mr. Pickwick and Mr. Micawber. By s. 5 the court is empowered to commit to prison, for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of any competent court. It is provided, however, that such jurisdiction shall only be exercised when it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum, in respect of which he has made default, and has refused or neglected to pay the same. As Lord Halsbury said, in *Stonor* v. *Fowle*, 13 A.C. 20, at p. 24, "The Debtors Act . . . has prescribed that there shall be in substance an abolition of imprisonment for debt, but has also provided that if a debtor having had the means or having the means at the time when the matter comes for adjudication . . . wilfully refuses to pay or has improperly spent the money which he had after the date of the judgment, and has not applied it as he should have done in honesty for the purpose of satisfying the creditor's claim, there shall then be a jurisdiction . . . of sending him to prison, and that that sending of him to prison shall be a punishment to him for the offence which upon that hypothesis he has already committed, inasmuch as the Act specially provides that that imprisonment shall not be in satisfaction of the debt—it is an imprisonment for the offence which he has already committed."

The section further provides that the court may direct any debt due from any person in pursuance of any order or judgment to be paid by instalments, and, as Mr. Justice Luxmoore pointed out, it is open to the court on a judgment summons asking for committal to make an order for payment of the debt by instalments, and such an order can be made even if the judge is not satisfied of the existence of means. He pointed out that such an order was often of value to the debtor, since it protected him against execution for more than the instalments in arrear. Nevertheless, the section did not enable a judgment creditor to ask merely for an instalment order (per Lord Esher, *Reg.* v. *Judge of Brompton County Court*, 18 Q.B.D. 213, at p. 217). Before the judge could make an instalment order, he must have before him an application for committal. It was accordingly the practice of the court, said his lordship, always to require evidence of means to be filed on a judgment summons, and not to make a committal order on the first application, save in the most exceptional cases, but to give the debtor an opportunity of meeting the judgment by paying adjusted instalments according to his means.

The question of the probable future income of the debtor had to be carefully considered in adjusting the instalments, since, in view of the principles enunciated by Lord Halsbury, the instalments should be adjusted so as to provide, if possible, only for payments which the debtor was likely to be able to meet as they fell due.

If the debtor makes default in payment of the instalments, the judgment credit might issue a fresh judgment summons, and before making a committal order the court must satisfy itself that since the due dates of the instalments the debtor has had the means of paying them available, but had neglected to use those means for the purpose of paying them. At this stage the prospects which the debtor might have of paying in the future were not material and could not be considered. The Act was not intended to enable the court, in effect, to make a charge on the man's future earnings, nor was it intended to furnish the creditor with a convenient and minatory process of execution. The material thing to ascertain, in the case of a salary or wage-earner with no other means, was the total surplus, over the period which had elapsed since the due dates of the instalment in arrear, of his salary or wages over the sum reasonably required to provide for the maintenance of the debtor and of those dependent on him. The total sum for which committal issued must not exceed that surplus.

His Lordship said that *primâ facie* there was no reason why the committal should not issue forthwith, but in a case where it was desirable to give a debtor an opportunity of making good his default, the court might direct the committal order to lie in the office, and not to issue if the moneys in respect of which it was made were paid within some named period, or by named instalments. Here the debtor's prospects of future means became material to be considered, but only in order that the court might decide what terms of suspension of committal would afford him a reasonable chance of making good his past default.

It was the practice of the High Court always to suspend the operation of the instalment while there was a committal order running, because since the committal order contemplates that the debtor's future income over the period of suspension of committal would be used to make good his past default, it followed that he was not likely to have during that period any income to meet subsequent instalments.

"The section," said his Lordship, "does not aim at punishing poverty, or at punishing a man for incurring liabilities recklessly or improvidently, and it ought, of course, not to be used for that purpose."

Respondent's Death Pending Notice of Appeal.

By Ord. 17, r. 4—

"Where by reason of . . . death . . . occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability . . . it becomes necessary or desirable that any person not already a party should be made a party . . . an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained *ex parte* on application to the Court or a Judge, upon an allegation of such change, or transmission of interest or liability . . ."

A defendant, appealing from the Clerkenwell County Court, asked in the Court of Appeal that his time for giving notice of appeal should be extended. He had given notice of appeal to the plaintiff's solicitors, who replied that they were unable to accept it as their client had died since the trial. The last day for giving notice of appeal under the rules had expired the previous day, and there was at present no one in existence authorised to receive it. The Master of the Rolls gave leave to set down the appeal but stayed further proceedings until the action was revived. The plaintiff's executors would have to revive the action by having themselves made parties if they wished to issue execution. Until then, the appellant's rights would be preserved and the notice of appeal could be served on the plaintiff's solicitors who were still on the record (*The Times*, 10th July).

Now, by Ord. 58, r. 2, the notice of appeal must be served on "all parties directly affected by the appeal," but the Court of Appeal

> "may direct notice of the appeal to be served . . . upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just . . ."

It has been held, in *Lady St. la Poole* v. *Dick* (1885), 29 Ch. D. 351, that service on the solicitors of a party, even though they have ceased to act, provided that they are still solicitors on the record, is good service. Cotton, L.J., said (at p. 356):—

> ". . . the fruits of the judgment not having been obtained by the plaintiff, there still was a duty imposed on the defendant's solicitor on the record as between himself and his client, so far as the client had not discharged him, and also as regards the other side, so as to make service upon him good service."

1. *Appeal from High Court Judgment.*

Normally, the procedure for an order to carry on proceedings would be to apply in chambers of the division from which the appeal is made (*Annual Practice*, 1935, p. 318). Thus, in *Ranson* v. *Patton* (1881), 17 Ch. D. 767, the appellant, after giving notice of appeal and having set it down, died, and his executrix obtained an order of course at the Rolls, that the appeal might be carried on by her in like manner as it might have been carried on, if he had not died. The order of revivor was held sufficient: no leave from the Court of Appeal was necessary.

In *Re Knight* (1881), 32 Sol. J. 166, the *respondent* died after notice of appeal was given. His executor gave notice of motion for security for costs, but before the motion was reached he applied *ex parte* for an order of revivor against him. The Court of Appeal (Cotton and Bowen, L.JJ.) held that if the appellant wished to proceed with his appeal, it was for him to obtain an order of revivor against the executor. The respondent did not object to facilitating the appeal. The motion for security was afterwards withdrawn on the ground that it was made by a person who was not a party.

2. *Appeal from County Court Judgment.*

In the case of appeals from the county court, the practice formerly was to apply to the Divisional Court. Thus, in *Blakeway* v. *Patteshall* [1894] 1 Q.B. 247, where the respondent died since the entry of appeal, it was held that the High Court had jurisdiction to add the personal representative. Meanwhile the appellant also had died and the representatives of both parties were added.

Hence the practice now is to apply to the Court of Appeal for leave to add the representative. The County Court Rules do not deal with the matter. In *Haywood* v. *Faraker* [1915] W.N. 11, where an appeal came from the Divisional Court, reversing the county court judgment, the Court of Appeal gave leave to add the personal representative of the defendant who had died after entry of appeal (Buckley, Phillimore, Pickford, L.JJ.).

The note in the *Annual Practice* correctly says:—

> "If appeal is direct to the C.A. from an inferior court, *semble*, the application should be made to the C.A." (*ibid*).

Eleven anglers were fined 5s. each at Windsor last Monday, says *The Times*, for fishing between the hours of sunset and sunrise in that part of the Thames that lies above the City Stone at Staines contrary to a by-law of the Thames Conservancy. A solicitor representing the Conservancy said that the case was brought so that publicity might be obtained warning other fishermen that they could not fish in the Thames during the hours of darkness. The fishermen in court said that they acted in ignorance. The Chairman of the Bench said that in view of the fact that it was a technical offence and that the Conservancy were not pressing for a heavy penalty the fine would be 5s. in each case.

Company Law and Practice.

Shares taken in a False Name.

By way of introduction to this rather complicated subject, I would like to ask my readers to bear in mind the provisions of s. 25, whereby (sub-s. (1)) the subscribers of a company's memorandum are deemed to have agreed to become members of the company and on its registration are to be entered as members in its register of members, and (sub-s. (2), which is the more important for our present purposes) every other person who agrees to become a member of a company, and whose name is entered in its register of members, is to be a member of the company.

Now, in *In re Hercules Insurance Company; Pugh and Sharman's Case*, 13 Eq. 566, the facts were these: S was a large shareholder in the company and he wished to take more shares, but the directors would not allow his name to appear for any larger number. Therefore S, at the secretary's suggestion, and with the concurrence of one of the company's local agents, sent in an application for shares signed by his daughter P, who was a married woman residing elsewhere, but at that time on a visit to him. The application did not state her condition and the residence of S was given in it. S paid the deposits on application and allotment, and he also received the notice of allotment and a dividend which was paid, and all the notices relating to the company, which were posted to P at his address. P signed the application without being informed or knowing what it was, and never told her husband anything about it, and neither P nor her husband knew she was on the list of contributories until an application was made by the official liquidator, when she found herself placed on that list. The Vice-Chancellor said it was quite clear to his mind that S had intended to become the owner of the shares and to derive from them all the benefits which they could give: and he attributed to S the knowledge that P, being a married woman, was incapable of contracting, and S had therefore used a fictitious name. For these reasons, he held that the case was similar to that of an application for shares in the name of a fictitious person, and that the name of S must be substituted for that of P in the list of contributories. The decision is also authority for the proposition that an application for shares in a false name puts a man in the same position, as regards liability, as a transfer into a false name. It was followed in *In re Central Klondyke Gold Mining Company; Savigny's Case* [1899] W.N. 1, where it was held that the facts showed the intention of the applicant to obtain the shares himself, and his estate—for he had subsequently become bankrupt—was therefore liable to contribute. He had, in fact, signed the application form with another and different name which he used when carrying on business (i.e., a fictitious name), but the application moneys had been paid by a cheque signed in his own name. The effect of these two decisions may, I think, be said to constitute our guiding principle that a person who uses another's name in taking shares for himself or who takes shares in the name of a fictitious person is liable just as if the shares had been taken in his own name—a principle which must be read in conjunction with s. 25 (2).

The next case which we must notice is *In re National Bank of Wales Limited; Massy and Griffin's Case* [1907] 1 Ch. 582, where M and G, who were a firm of stockbrokers, purchased on the market certain shares in the company from one Sparke; the shares were transferred to L, who was the nominee of M and G, and a clerk in their employment. The company was then in the course of being voluntarily wound up, and the liquidator sanctioned the transfer to L and a subsequent transfer by L, who was then an infant, to one D, who was also an infant, which fact was known to the liquidator two years after D was registered as the holder. Ten years later, after calls had been made on the shares but not paid, the liquidator applied that the names of M and G might be substituted for that of D in the register of members and in the list of

contributories; but the Court held that, as there was no contractual relation in respect of the shares between the company and M and G (their contract being with Sparke), M and G could not be placed on the register or list. *Pugh and Sharman's Case, supra*, was distinguished on the ground that there was there, in reality, some contractual relation between the company and the person whose name it was sought to place upon the register. The result amounts to saying that if X takes shares in the name of Y with Y's consent as the trustee of X, there being no contract by X under a different name with the company, X is not liable as contributory.

The facts in *In re London Bombay and Mediterranean Bank*, 18 Ch.D. 581, were different inasmuch as the applicant applied for certain shares in the company, some in his own name and some in the name of his wife, who was illiterate and quite unable to read or write in any language, and he paid the deposit on all the shares out of his own moneys. The shares were allotted accordingly, and he subscribed the memorandum and articles of the company on his wife's behalf as well as on his own, he paid all calls upon the shares, and he subsequently sold and transferred some of his wife's shares, executing the transfers for her or in her name. But all these transactions took place without the knowledge of his wife. At the date when the company was ordered to be wound up, the name of "Y the wife of X" was on the register as a past holder of 140 shares, and the then holder of sixty shares. Upon the death a little while later of the husband, the wife's name was placed upon the A list of contributories in respect of the sixty shares, and upon the B list in respect of the 140 shares. As the wife had no separate estate, the liquidator applied for rectification of the B list by the substitution of the name of the husband's executors for the wife's name. Hall, V.C., concluded that, in the circumstances, the transaction was meant to be what it purported to be—that the husband meant to make a provision for his wife by means of these shares, and accordingly requested the company to put them into her name. In his opinion, the non-communication by him to his wife of the fact that the shares had been put into her name could not result in a variation of the actual effect and operation of the transaction. He did not find that element which, in his view, existed in all the cases where a person has been put upon the register who is not the person whose name was originally there: "I do not find any case in which that has been done where there has been no concealment of the real transaction from the company, and they have thought fit to accept the person as a shareholder": per Hall, V.C., at p. 568. He held, therefore, that, as the company had accepted the wife as a shareholder without any misrepresentation or concealment on the husband's part, the husband's estate was not liable, and the company was not entitled to the rectification it had requested. In other words, X is not liable when, without Y knowing, he takes shares for Y in Y's name, and Y is accepted as a shareholder by the company.

Both this last case and its predecessor, *Massy and Griffin's Case*, to which I have referred, may be regarded as two of three exceptions to the principle which emerges from *Pugh and Sharman's Case, supra*: the third exception is the case of *In re Britannia Fire Association; Coventry's Case* (1891), 1 Ch. 202. There X, who was a director of the company, sent to his co-directors a letter of application, signed by him "for" his son Y, and naming him, for the allotment of some shares, pursuant to an understanding between the directors that the unallotted shares should be issued temporarily to their nominees until the public applied for them, but neither the directors nor their nominees were to be under any liability in respect of such shares. Accordingly, the son Y was registered as the holder of the shares; but he was residing abroad and was totally unaware of the application or of the registration of the shares in his name. Nothing was ever paid on the shares, either by way of deposit, dividend or otherwise; and no certificate of allotment was ever issued. Eventually the company passed a resolution for voluntary winding up, and, both the father and son having died without the son ever having in any way recognised his position as shareholder, the father's executors were placed by the liquidator upon the list of contributories in respect of the shares, whereupon the executors took out a summons to have their names removed therefrom. The Court of Appeal distinguished *Pugh and Sharman's Case, supra*, on the ground that the directors agreed not to take shares, not that they should take shares. "This is not a case of A agreeing to take shares for B, but of A committing a fraud, and not taking shares for himself or anyone else": per Lindley, L.J., at p. 210. In these circumstances, the court held that the case was governed by the law of contract, and that, though X and his co-directors might have rendered themselves jointly and severally liable on the ground of fraud, yet the facts did not establish such an actual contract by X to take the shares as would justify his executors being placed on the list of contributories in respect thereof.

In all these cases which I have mentioned, the multiplicity of facts, consideration of which is essential if the principles involved are to be made clear, must not be allowed to confuse those principles. The facts in cases of this sort are all-important, and before I conclude I would like to bring to my readers' attention shortly two cases in connection with the purchase of shares by a father in the name of his infant son. The first is *In re Imperial Mercantile Credit Association; Richardson's Case*, 19 Eq. 588, where a father purchased shares in a company and paid for them, but took a receipt and signed the transfer deed as transferee in the name of his son; the shares were registered in the name of the son, who was, both then and at the hearing of the summons, a minor. Upon the company being wound up, the son's name was put upon the list of contributories; but Bacon, V.-C., held that the register of members and the list of contributories must be rectified by substituting the name of the father for that of the son—the *ratio decidendi* being apparently that it was obviously the father's intention to purchase the shares for himself. The decision seems clearly to come within the principle of *Pugh and Sharman's Case, supra*, though that authority was not referred to in the judgment, which was based primarily on principles of common sense. The second case is *Reaveley's Case* (1848), 1 De G. & Sm. 550, which was considerably earlier than *Pugh and Sharman's Case*, which should be compared with *In re the Electric Telegraph Company of Ireland; Maxwell's Case*, 24 Beav. 321. In *Reaveley's Case* shares were purchased for an infant without disclosing his infancy, and on its being discovered, the infant's father covenanted with the company that his son should perform the agreements contained in the company's deed of settlement, and to indemnify the company. The father's name was held to be properly placed on the list of contributories, as being a trustee for his son, and as by agreement under seal he had put himself in the place of his son, so far as regards any liability incurred during the son's minority, the father having covenanted to pay all instalments in respect of calls duly made. It will be seen that this case was decided on principles quite different from those in *Pugh and Sharman's Case*, but it is not uninteresting by way of comparison with those which I have mentioned.

Mr. Evan Lewis Thomas, K.C., a Master Bencher of Lincoln's Inn and treasurer in 1934, left estate of the gross value of £62,323, with net personalty £60,791. He left: £100 to the treasurer of the Honourable Society of Lincoln's Inn, requesting him to purchase a piece of plate for the use of Benchers of the society, "in memory of the happy days I have spent in their company"; and after a few specific bequests, the residue of the property upon trust for his wife for life with remainder to his children, whom failing, to the Master, Fellows and scholars of Sidney Sussex College, Cambridge, for studentships or scholarships valued at not less than £100 per annum.

A Conveyancer's Diary.

Sale by Personal Representatives of Deceased Owner subject to Family Charges.

In my "Diary" for the 6th April last I considered the question of a sale by a personal representative of a tenant for life, and whether a purchaser was safe in accepting a conveyance of settled land or *quondam* settled land from such a personal representative, relying upon s. 110 (3) of the S.L.A. I came to the conclusion that a purchaser could safely take such a conveyance and was bound to assume that the personal representative was selling for the purposes of administration, not of the settled or *quondam* settled land, but of the estate of the deceased tenant for life.

I have had a case put to me which shows how unfortunately this power of a tenant for life may operate sometimes.

Assume this state of things: Before 1926 A purchased land which was subject to family charges, but took from his vendor a covenant of indemnity against such charges. The purchaser died after 1925, and his personal representative sold the land as such to a purchaser without disclosure of the family charges.

I suppose that may have happened, and no doubt it has.

In the first place, I think that the purchaser gets a good title free from the family charges altogether.

Section 110 (3) of the S.L.A. enacts as follows:—

> "A purchaser of a legal estate in settled land from a personal representative shall be entitled to act on the following assumptions—
>
> "(i) If the capital money, if any, payable in respect of the transaction is paid to the personal representative, that such representative is acting under his statutory powers and requires the money for the purposes of administration."

The other sub-clauses are not material for the present purpose.

Now a personal representative has, for purposes of administration, all the powers conferred by statute on trustees for sale (A.E.A., s. 39 (1) (iii))—and trustees for sale have "All the powers of a tenant for life and the trustees of a settlement under the S.L.A., 1925": L.P.A., s. 28 (1). It follows that the personal representatives of a tenant for life have all the overriding powers that the tenant for life as such had. Consequently the personal representative may sell land freed from any family charges affecting the land.

The result would be, therefore, in the case which I am assuming, that the persons entitled to the family charges would be deprived of their security by the conveyance by the personal representative and would have to look to the purchase money in his hands to answer their charges. That might mean that they would lose their security altogether.

I do not suppose that such an unjust result was in the contemplation of those responsible for the drafting of the A.E.A., but I am afraid that that is the position.

It might even be that the personal representative had no right to sell at all, there being no purposes of administration which required that he should do so; still, the chargees would have no redress except a personal action against him, which might well prove fruitless. The position of the chargees would be all the worse, as in all probability they would know nothing of the sale until after it had been completed, and perhaps not until some considerable time afterwards.

Of course this all results from the provision in the S.L.A., making land settled land which is vested in an absolute owner subject to family charges. I do not know that any benefit has accrued from that enactment even as amended by the L.P. Amend. A. In a case such as I have mentioned an injustice is done by it.

Power of English Administrators to Postpone Sale of Infants' Share of Estate of Intestate Domiciled Abroad.

A novel point with regard to the powers of administrators under the A.E.A., 1925, was raised in *Re Wilks: Keefer* v. *Wilks* [1935] 1 Ch. 645. One E. L. Wilks, domiciled in Ontario, Canada, died possessed of estates in Canada, the United States of America, France and England. He left wills disposing of his estates in Canada, the United States and France, but no will could be found disposing of his estate in England. The deceased left a widow and three infant children surviving him, and letters of administration were granted to his widow and the plaintiff in the proceedings. Included in the English estate was a large block of shares in an English private company. According to the law of Ontario the sale of the portion of those shares to which the infants were entitled could not be postponed by administrators appointed in that country. The English administrators were anxious to postpone the sale of the shares, no doubt because they considered that by doing so they could realise the shares to better advantage.

The question was whether the administrators could retain the shares, having regard to the fact that according to the law of the country of the deceased's domicil an immediate sale was imperative.

The point at issue really was at what point the administrators in this country ceased to be administrators, and became trustees for the purpose of distribution among the persons entitled. So long as the administrators were performing their duties as such their powers and rights were no doubt governed by the A.E.A., 1935. But once the time arrived when their only duty was to distribute the estate amongst those entitled according to the law of the domicil, then the powers given to them by the Act would no longer be exercisable.

The pertinent provision in the A.E.A., 1925, is contained in s. 33 (1):—

> "On the death of a person intestate as to any real or personal estate such estate shall be held by his personal representatives—
>
> "(*a*) as to the real estate upon trust to sell the same; and
>
> "(*b*) as to the personal estate upon trust to call in, sell and convert into money such part thereof as may not consist of money;
>
> with power to postpone such sale and conversion for such a period as the personal representatives, without being liable to account, may think proper . . ."

It was contended on the one hand that, although it might be said that when debts and duties had been paid and a net residue ascertained, the administration was at an end, and the law of domicil came into operation, yet in that case the administrators could not distribute amongst the persons beneficially entitled because such persons were infants and not able to give receipts for their shares, therefore, it was said, the administration must continue during the minorities of the beneficiaries.

On the other hand, it was argued that the *primâ facie* duty of an ancillary administrator, in a case where the estate was not being administered by the court, is to remit the net residue to the principal administrator and that the administrators in this country had no power to retain the infant's shares and postpone a sale contrary to the law by which the principal administrators were governed.

Farwell, J., after commenting upon the fact that the question was free from authority, referred to a number of sections of the A.E.A., 1925, and especially to s. 33, and said, "It appears to me that this is a matter of administration and that the administrators are entitled to exercise the power of postponement which is given to them by the Act. They have in their hands money which, no doubt, is the property of the

infants, but in respect of which they can get no receipts from the infants because they are still infants." His lordship added that he considered that it would be possible for the administrators to appoint a trustee for the infants under s. 42 of the A.E.A. The learned judge also said that though the administrators were trustees they were "trustees holding the property in their character as administrators and having, therefore, the powers which are given to administrators under s. 33 of the A.E.A., 1925." That seems a somewhat strange saying; it appears to imply that administrators who become trustees remain in all but name administrators. I hardly think that his lordship could have intended that. There is, however, not much to be said against his lordship's conclusion that "The power to postpone given by the Act is a power given to administrators and, in my judgment, it is exercisable over the assets, which are in this country, until the administrators can get a good discharge for the money in their hands from the persons who are beneficially entitled to it."

Landlord and Tenant Notebook.

Waiver of Forfeiture by giving Notice to Repair.

A TENANT'S covenant to effect repairs on notice usually confers upon the landlord a right of entry to view the state of the premises ("to view the defects" is occasionally found, but is question-begging and otherwise objectionable) and binds the tenant to repair within so many months of receiving notice calling upon him so to do. Sometimes a further right of entry is conditionally reserved, which entitles the landlord to do the repairs himself if the tenant fails to comply with the notice; a duty to pay for the work is imposed upon the defaulter, and in its most elaborate form the covenant makes the amount recoverable by distress.

This covenant is a powerful weapon, but it needs skilful handling, failing which it may injure him who wields it more than him against whom it is directed.

I read recently that the need for this covenant first became manifest early in the fourteenth century. In a case reported in the "Year Book for 1338," it appeared that a landlord sued a tenant of three mills on his covenant to sustain them and was able to show that the covenantor's neglect had already resulted in such damage as to make it impossible for him to fulfil a further express obligation of delivering up the premises; but the plaintiff was told that in the absence of express provision in the covenant his action was premature and could not be brought till the end of the term. In so far as reason entered into the matter, one of the judges observed that the lessee suffered more by the disrepair than did the lessor.

This case may have brought home to conveyancers the fact that in the absence of a right of entry expressly reserved a landlord has no right to visit, let alone to repair the demised premises; indeed, far later, in *Barker* v. *Barker* (1828), 3 C. & P. 557, a jury which probably held strong views on the house-and-castle analogy awarded a tenant £20 damages for trespass against his landlord who had effected repairs without the plaintiff's consent.

In fairness to the state of our law in the early fourteenth century, it should be said that the mistake made by the landlord in the case cited was to expect too much of the law of contract at the stage it had then reached; he could and should, as he was told by the court, have brought an action for waste.

At all events, much has happened since 1328; the law of contract has been developed, long leases have come into vogue, and forfeiture clauses have become a recognised institution. Those who seek to operate them have to be on their guard against waiving their rights. It is in this connection that landlords, armed with covenants to repair on notice as well as with general repairing covenants, have sometimes missed their aim. A group of four cases shows us how to do it and how not to do it.

First comes *Roe d. Goatly* v. *Paine* (1810), 2 Camp. 520, in which the subsidiary covenant entitled the lessor to enter twice a year and give notice to repair defects within three months. About a year after the term had commenced, the lessor served a notice in these terms: "I require you forthwith . . . to put the premises into good repair . . . agreeable to the covenant . . . contained in the lease." Less than three months after serving this notice, the plaintiff issued his writ for ejectment, basing his claim on his right to re-enter on breach of the general covenant to repair. The defendant pleaded that the landlord was trying to have it both ways, but the "forthwith" was an answer to this: the notice could not have been based on the covenant to repair on notice.

This case was distinguished in *Doe d. Morecraft* v. *Meux* (1825), 4 B. & C. 606, in which the notice, given on the 7th August, specifically stated "within three months," which was the period specified in the second covenant. On the 21st October the landlord accepted the Michaelmas rent: on the 28th October he issued his writ. Here it was held that the notice given effected a waiver of the breach of the general covenant.

Then, in *Doe d. de Rutzen* v. *Lewis* (1836), 5 A. & E. 277, in which the general covenant to put, keep and yield up in repair was reinforced by a covenant giving the lessor the right to enter, view, give notice, and failing compliance within two months effect repairs at tenant's expense, a notice was given in July, 1830, calling upon the lessee to "fulfil all covenants," at the same time intimating that if he did not they would be done for him and he would be charged with the cost, and that any further breach would affect the existence of his lease. Nothing was done, and in November a further notice told the tenant that as he had not complied he was given further notice to repair: the hedges and gates by 30th December, the buildings by 31st May, and if he did not, the landlord would, according to the lease. Forfeiture on the ground of breach of the general covenant was held to have been waived by these notices; for the landlord had taken upon himself to do the repairs, and after the two months had elapsed the tenant could not effect them.

The fourth case of the group is *Few* v. *Perkins* (1867), L.R. 2 Ex. 92. In this, the landlord had given an occupying undertenant a schedule of work required, without mentioning any particular time, though there was a covenant under which he could have specified three months. A few days later he wrote to the tenant calling upon him to repair the house and premises "in accordance with the covenants contained in a lease granted," etc., and went on to say that he had left a specification with the undertenant for that purpose. This was held not to waive the plaintiff's rights under the general covenant; *Doe d. Morecraft* v. *Meux* was in turn distinguished, and *Roe d. Goatly* v. *Paine* applied: the "in accordance with the covenants" was of the same effect as the "forthwith."

The principle underlying these four decisions is undoubtedly this: a notice which directs the tenant's mind to the covenant to repair on notice waives the breach of the general covenant; but if the notice, though qualified in some way, does not invoke or suggest the particular covenant, there is no such waiver. There is, of course, no necessity at all for a notice under the general covenant, unless and until forfeiture is contemplated: hence landlords should be the more careful how they set about reminding tenants of their obligations.

Mr. Cecil C. H. Moriarty, Assistant Chief Constable of Birmingham, was, at a meeting of the Watch Committee last Monday, designated Acting Chief Constable, pending the appointment of a successor to Sir Charles Rafter, to whom tribute was paid as a wise administrator and highly capable organiser.

Our County Court Letter.

THE RESTRICTIVE COVENANTS OF ROUNDSMEN.

In *Alfred Savage Ltd.* v. *Heather*, recently heard at Oxford County Court, the claim was for damages, and an injunction in respect of the breach of a covenant that the defendant would not, within three years of the termination of his employment, either on his own account or anyone else's, either directly or indirectly, canvass or solicit orders from persons who had been customers of the plaintiffs during his employment. The plaintiffs' case was that the above agreement was made in August, 1930, when the defendant entered their employ as a roundsman, selling domestic goods. For the twelve months up to the 28th February, 1935, the average weekly takings were £25 10s. After the defendant's dismissal, he joined a rival business, going the same rounds one day earlier. The plaintiffs' takings then dropped to about one-third, and they obtained an interlocutory injunction, whereupon their takings rose again to between £16 and £18. The defendant's case was that, for five years before joining the plaintiffs, he had worked for another employer, selling similar goods on almost the same rounds. On that business being sold, the defendant took over 120 of its customers, and joined the plaintiffs. It was submitted on his behalf that the clause was in restraint of trade, and void, as it was unlimited with regard to the type of goods, and the length of time a person was a customer. It was also world-wide, and would result in depriving the defendant of his livelihood for three years. His Honour Judge Randolph, K.C., gave judgment for the plaintiffs, with costs. Compare *Wessex Dairies Ltd.* v. *Smith* [1935] 2 K.B. 80, and a leading article entitled "The Solicitation of Customers," in our issue of the 6th July, 1935.

RIGHT OF WAY FOR CATTLE.

In *Phillips* v. *Lukings*, recently heard at Bromyard County Court, the claim was for £5 damages, and an injunction in respect of the interference with and/or restriction of the supply of water to the plaintiff's cattle, also in respect of trespass by the defendant's cattle. Subject to one point for the court's decision, the following settlement was agreed: Defendant had a right of way against the hedge on plaintiff's field, but would prevent his cattle from straying: defendant had a right to water for domestic purposes and for four cattle: the private drinking tank was the property of the plaintiff, but was to be repaired by the defendant. The plaintiff contended that 10 feet was an ample width for a right of way for four cattle, but the defendant required 15 feet. His Honour Judge Roope Reeve, K.C., held that 12 feet was a reasonable width, and recommended the erection of a wire fence to prevent straying. No order was made as to costs.

THE REMUNERATION OF ESTATE AGENTS.

In *Easby* v. *Lee*, recently heard at Darlington County Court, an account was claimed in respect of the purchase of a house. In May, 1934, the plaintiff had arranged to pay £365, viz., £15 down and 10s. 6d. a week, but he had to move to Middlesbrough after seven weeks. The defendant thereupon agreed to let the house at 12s. 6d. per week: to pay 10s. 6d. to a building society, and keep a commission—any balance to be paid to the plaintiff quarterly. The clerk to a building society produced the conveyance of the house, wherein the consideration was shown as £475. The defendant's manager was unable to say whether this overstatement was for the purpose of deceiving the building society. The defence was that the plaintiff was not entitled to have his weekly instalments counted as payments to the building society until the conveyance came through, which was not until later. His Honour Judge Stewart held that the price of the house was about £360, and the plaintiff had never agreed to pay £475. In the absence of any real defence, judgment was given for the plaintiff for an amount to be ascertained, as from the 2nd May, 1934, with costs on the higher scale.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

BAKER'S FOOT INJURY.

In *Skelton* v. *Palmer and Edwards*, at Exeter County Court, the applicant's case was that, while at work in August, 1934, he had stepped on a rusty nail. During the long hours of work at Christmas his foot became inflamed, and compensation was paid at the rate of 19s. 3d. per week from the 21st February to the 6th April. The respondents contended that incapacity (so far as caused by the accident) had then ceased, and this view was upheld by His Honour Judge Wethered, who gave judgment for the respondents, with costs.

CARDIAC IRREGULARITY AND INCAPACITY.

In *Shelton Iron Steel and Coal Co. Ltd.* v. *Brassington*, at Stoke County Court, an application for the review of an award was made in the following circumstances: The respondent had been entombed for seventeen hours (in 1931) and had had full compensation after rescue. In June, 1933, at Hanley County Court, his earning capacity was fixed at £1 16s. 9d. a week, and an award was made of 4s. 3d. a week compensation. The respondent had since done occasional work, and the applicants' case was that he could now do a full week's work, as his cardiac irregularity only amounted to an extra heart beat, which was found in many people in perfect health. The respondent contended that he had only once been able to do six days' work, even if other men (who had been entombed at the same time) were now able to work overtime, on surface work, with an extra heart beat. The respondent's medical evidence was that his pulse was 120 in 1932, and 90 at the present time. His Honour Judge Ruegg, K.C., held that the respondent should try the work offered, and the compensation would be reduced to 1s. 1d. a week, judgment being given for the applicants.

DOMESTIC SERVANTS AND INCAPACITY.

In *Cooke* v. *Reeve*, at Burton-on-Trent County Court, the applicant's case was that, while employed as a domestic servant, she had fallen and injured her hand. On washing days, it was a part of her duty to fill a churn with water, and then to roll it towards a copper, into which the water was ladled. On the 2nd May, 1932, the laden churn had fallen on to her hand, from which a finger was afterwards amputated. After being an in-patient from July, 1932, until September, 1932, she returned to work until February, 1935, when she was dismissed. The medical evidence was that the hand would never be strong again, and that the applicant was not able to do the full work of a domestic servant. The respondent's case was that the churn should not have been used for filling the copper, which should have been filled with buckets. The accident was therefore due to an added peril, and, in any case, the applicant could do her work now as well as before the accident—as shown by the evidence of a fellow worker and a doctor. His Honour Judge Longson observed that the reason for the applicant's dismissal from her employment was immaterial. The effects of the injury to the hand were so small that there was no longer any incapacity, and judgment was given for the respondent, with costs on Scale B.

LUMP SUM FOR FRACTURED INSTEP.

In *Macmillan* v. *Heber Denty Ltd.*, at Bristol County Court, the applicant had been "running" deals, one of which caught in a girder, and caused him to fall. His right instep was fractured, and he would have been entitled to claim 30s. a week on the basis of total incapacity. The latter might have been difficult to establish, but a claim for 15s. a week would probably have succeeded. The respondents had offered £200 with £40 costs, as a lump sum, and His Honour Judge Parsons, K.C., sitting with a medical assessor, approved the settlement.

To-day and Yesterday.

Legal Calendar.

9 September.—On the 9th September, 1306, an amusing action in the Mayor's Court is recorded. Stephen le Barber, of London, being sued by Robert le Barber, of "Graschirche" and Maud his wife. The defendant had gone to the house of the plaintiffs with a woman and asked to see the solan (or parlour), and to drink there. Later, Maud heard the two making a noise and, indiscreetly enough, went in, finding them in a compromising situation. Stephen thereupon hit her on the head with a quart pot and kicked her. The defendant, of course, declared that he only went to the house to buy wine and was assaulted first. The jury, however, gave the plaintiffs 10 marks damages, and Stephen was sent to prison.

10 September.—On the 10th September, 1917, Lieutenant Douglas Malcolm was tried at the Old Bailey on a charge of murdering one Anton Baumberg.

11 September.—On the 11th September, 1735, Mr. Justice Tracy died, aged eighty, at his seat at Coscomb, in Gloucestershire, nine years after his retirement from the Bench. He began his judicial career in Ireland, in 1699, but in the following year he was removed to the English Court of Exchequer, and in 1702, to the Common Pleas. He was "a complete gentleman and a good lawyer of a clear head and honest heart, and as delivering his opinion with that genteel affability and integrity that even those who lost a cause were charmed with his behaviour."

12 September.—Only four years after his appointment as a justice of the King's Bench, Sir Samuel Eyre was seised with the colic, just after finishing the circuit at Lancaster and there he died, on the 12th September, 1698. His body was removed to the family vault in St. Thomas's Church, Salisbury, and a costly monument was erected to his memory in the place of his death. While he sat in the King's Bench, his cousin, Sir Giles Eyre, was his colleague.

13 September.—An extraordinary scene took place when James Moore was convicted of murder at Maryborough, on the 13th September, 1873. He was asked whether he had anything to say and replied: "What's the use of talking when I am found guilty?" He added: "If you are going to pass sentence, pass it soon and sudden and as short as ever you can." Throughout the Chief Baron's address, Moore continued to make remarks: "Make haste, I am in a hurry. I'll go below if you don't hurry. I don't want any speeching and, if you will talk, I may as well have my half-hour . . . Be quick or I'll pass it myself."

14 September.—On the 14th September, 1301, Ralph de Hengham was appointed Chief Justice of the Common Pleas. Thus ended a period of over ten years retirement, following his dismissal from the Bench. No one exactly knows the reason of his disgrace, and he may well have been the victim of an excess of reforming zeal on the part of Edward I, the English Justinian. According to one tradition, he had in pity erased from the roll a fine imposed on a poor man, and for this offence had been dismissed and fined 800 marks, with which a clock tower had been erected at Westminster.

15 September.—Lunardi's balloon ascent at Moorfields, on the 15th September, 1784, attracted a crowd of 150,000 persons. It also interrupted the course of justice. "A jury was deliberating the fate of a criminal whom, after the utmost allowance for some favourable circumstances, they must have condemned, when the balloon appeared and a general inattention and confusion ensued. The jury was perplexed with considerations on the case which their curiosity would not suffer them to weigh, and being under a necessity to determine before they departed, they took the favourable side and acquitted the criminal . . ."

The Week's Personality.

The beginning of this story cannot be better told than in the words used by Sir John Simon in the culminating scene at the Old Bailey. He described the outbreak of war. "The appeal which that tremendous event made was bound to evoke a response in the chivalrous heart of Douglas Malcolm: within three days he was a member of His Majesty's army. If he had sought excuse for hanging back, he might have found it; he was not a soldier by profession; he had important business interests to consider: he was a married man; his wife was but a bride, she needed his protection. But he did not hesitate." While he was in France, his wife became infatuated with a blackguard, "a Russian by nationality, with the worst of records, passing under a false name, flaunting a bogus title . . . a man without honest occupation." He called himself Count de Borch. Malcolm returned just in time to save his wife and thrash the fellow, but once he was back in France, she declared she could not give him up. Again Malcolm came home, wrote his wife a letter full of noble affection and went to de Borch's lodgings with a whip and a revolver. There was a struggle culminating in the shooting of the foreigner. At the Old Bailey, the prisoner's counsel relied on self-defence, for the dead man was also armed. McCardie, J., summed up severely, but the jury found a verdict of "Not Guilty" which, in and out of court, was greeted by cheering, ushers and police being helpless to restrain the public feeling.

Applause in Court.

Applause in court, rare enough in the grave routine of British justice, has made itself heard of late—at Morpeth, greeting the dropping of a murder prosecution, and at Marylebone, hailing the acquittal of a housekeeper charged with embezzlement. But really great outbursts of applause seldom occur and that only under stress of unusual public emotion, as when the jury in the Irish Common Pleas found in favour of the validity of the marriage of poor Maria Teresa Longworth and against Major Yelverton, whose cynical evidence had enraged all Dublin. Barristers tore off their wigs and waved them in the air. Cheers for the judge, for the counsel, for the jury, rang through the court, while Monaghan, C.J., beamed from the bench and all but joined in the demonstration. The delighted crowd drew Maria's carriage from the court to her hotel, and from the balcony there she had to speak her thanks. "You will live in my heart for ever," she said, "as I have lived in yours this day. I am too weak to say all that my heart desires, but you will accept the gratitude of a heart that was made sad and is now more glad. For ever I belong heart and soul to the people of Dublin."

Popular Acquittals.

Hardly less remarkable was the scene at the Old Bailey when Lieutenant Malcolm was acquitted of the murder of the so-called Count de Borch. War-time fever and sympathy for the gallant young officer who had returned from the front to save his wife from seduction by a disreputable alien knew no restraint. Women stood on the benches of the court waving umbrellas and vanity bags, cheering and crying, while the crowd outside echoed the shouts from within. The police and ushers were powerless to check the demonstration, and when the uproar had in some degree subsided, Mr. Justice McCardie said gravely: "I am sorry that the deliberation of the court should be stained——" But even he could not finish his sentence, and after a fresh burst of shouting, he closed the proceedings, saying simply: "Lieutenant Malcolm, you are discharged." Applause in court has generally suffered judicial discouragement, and once at the Leeds Assizes, in 1893, Lord Chief Justice Coleridge sent an unfortunate young man to prison for a couple of days for insulting the dignity of the court by such a display.

Reviews.

Notes on Bankruptcy Practice and Procedure. By J. F. Weaving, Staff Clerk, Birmingham County Court. 1935. Crown 8vo. pp. viii and (with Index) 61. London, Liverpool and Birmingham: The Solicitors' Law Stationery Society, Ltd. 3s. 6d. net.

From his experience in the office of a busy county court, the author has compiled a most useful guide to the filing of county court proceedings in bankruptcy. The object of the work is to meet the problem that quite a fair percentage of documents presented for filing has had to be rejected on account of irregularities or omissions. A number of useful forms are included in an appendix. This is the kind of practice manual that all solicitors who have bankruptcy work will heartily welcome.

The Housing Act, 1935. By Alfred R. Taylour, M.A., of Lincoln's Inn, Barrister-at-Law. 1935. Demy 8vo. pp. xxxviii and (with Index) 171. London: Hadden, Best and Co., Ltd. 8s. 6d.

In his preface the author expresses the hope that the publication of this book so soon after the coming into force of the Act with which it is concerned will not militate against usefulness. On the contrary this early publication will, we think, constitute one of its chief claims to the attention of readers. Intended not only for the legal profession but also for the large body of local government officials concerned in the administration of housing law, it is, the author states, of the nature of "first aid" and the precursor of a larger work on the Housing Acts. The book sets out the text of the Housing Act, 1935, which has been shortly annotated with useful cross references. An introduction of some twenty-six pages enables the reader to grasp the main features of the Act, while a table of the statutes mentioned in the Act provides a convenient guide to the changes which have been introduced in their regard.

Electricity Law and Practice. By R. H. Studholme, M.A., Solicitor of the Supreme Court, with a Foreword by the Attorney-General. 1935. Royal 8vo. pp. xxx and (with Index) 502. London: Sir Isaac Pitman & Sons, Ltd. 30s. net.

This is an excellent work, which, we are told, owes its origin to notes made by the author while practising as a solicitor to electricity undertakers. It is, therefore, something more than a review of law and precedent; it is a practical review of the whole complex (and so far unconsolidated) series of statutes, orders and regulations, covering a period of nearly a century, in which the author has endeavoured with much success to co-ordinate and summarise the law, with the addition of notes and comments drawn from his own experience. It should be found of great assistance to members of the legal profession concerned in advising upon this branch of law: also to engineers, secretaries and managers of authorised undertakings who want a means of easy reference to the main provisions of the law to guide them in the planning of schemes. To the consumer of electricity and the property owner, whose interests are affected at various stages, the volume may also be recommended as likely to prove of good service.

Books Received.

Mr. Justice Avory. By Stanley Jackson, Barrister-at-Law. 1935. Demy 8vo. pp. (with Index) 372. London: Victor Gollancz, Ltd. 15s. net.

Picture Him Dead! By Frank A. Clement. 1935. Crown 8vo. pp. 314. London, New York and Toronto: Longmans, Green & Co. 7s. 6d. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

Notes of Cases.

High Court—King's Bench Division.

Lowe *v.* Peter Walker (Warrington) and Robert Cain and Sons, Ltd.

Finlay, J. 22nd, 23rd and 29th July, 1935.

Revenue—Income Tax—Employees' Benefit Fund established by Company—Assets Contributed by Company—Transfer of the Assets of the Fund to another Fund capable of Approval for Purposes of Income Tax Privileges—Whether a "Sum paid by an Employer . . . by way of Contribution towards a Superannuation Fund"—Finance Act, 1921 (11 & 12 Geo. 5, c. 32), s. 32 (1).

Appeal by the Crown against a decision of Special Commissioners for Income Tax allowing an appeal by Peter Walker (Warrington) and Robert Cain & Sons, Ltd., the respondents, against certain assessments to income tax for the years ended the 5th April, 1930 and 1931, made upon them under Sched. D in respect of the company's trade as brewers.

Pursuant to an agreement made in 1921 at the formation of the respondent company, an agreement was in 1923 entered into between the company and trustees for the creation out of capital of a benefit fund for the company's staffs and employees. Under the earlier agreement, 50,000 fully-paid ordinary shares in the company were set aside as a nucleus for the fund. By the 1923 agreement, these shares were allotted to the trustees, who were to hold the fund and any other contributions which the company might at any time make. The benefit scheme was not to be contributed to by the employees. Clause 22 of the agreement empowered the company to revoke or alter all or any of the trusts and provisions contained in the agreement, and to declare new trusts in exclusion of or addition to them. In 1928, the assets of the fund had increased to £95,000, of which the company had contributed £80,000. The original 50,000 ordinary shares had by then been sold and the proceeds put into other investments. As the fund was not capable of approval by the Commissioners of Inland Revenue as a "superannuation fund" within the meaning of s. 32 of the Finance Act, 1921, and the company's contributions to it were accordingly denied income tax privileges given by the section in the case of an approved fund, it was agreed that the power of revocation given by cl. 22 of the 1923 agreement should be exercised by the company as to investments worth £78,303, then forming part of the fund, and that, having been withdrawn, these investments should be used to set up a new fund which was capable of approval by the Commissioners under s. 32 of the Act of 1921. The £78,303 represented partly the proceeds of the sale of the original 50,000 shares and partly investments made with cash contributions made by the company. For the Crown, it was contended that this transfer of the £78,303 did not constitute a payment towards a superannuation fund within the meaning of s. 32 of the 1921 Act and that no part of the sum was allowable as a deduction in computing the company's profits under Case I of Schedule D. For the respondents, it was contended that the transfer was a payment within the meaning of the section and that deduction in respect of it should be allowed, subject to the powers given to the Commissioners by s. 32 (1), proviso (*a*), of the 1921 Act, where an employer's contribution was not an ordinary annual contribution. The Special Commissioners, accepting the respondents' contention, reduced the assessments accordingly.

Finlay, J., in a reserved judgment, said the case was a difficult one. He thought that, as had been argued for the Crown, the consideration for the earlier agreement, the 50,000 shares, had been provided by the promoters of the scheme, i.e., the directors of the respondent company. Clause 22 was the vital one in the 1923 agreement, and he (his lordship)

construed it as an absolute power of revocation. On this subject, *Eland* v. *Baker*, 29 Beav. 137, had been referred to, but there was nothing to alter that plain construction of the clause. A difficulty, of course, arose because a company could not own its own shares. That principle and its limitations had been explained by Romer, J., in *Kirby* v. *Wilkins* [1929] 2 Ch., at p. 444. It was important that the company had contributed £80,000 of the £95,000 to which the fund had grown, and the original 50,000 shares of the company had been sold and the proceeds otherwise invested. The £78,303 with which the approved fund had been started consisted partly of those proceeds and partly of cash contributions by the company. As to the cash contributions, it was, in his (his lordship's) opinion, clear that they could be deducted if his view of the power of revocation was correct. With regard to the proceeds of the original shares, it did not matter that the promoters had provided them. The shares were in the control of the company, which could exercise the power of revocation as to them. A serious difficulty would have arisen if the power had been exercised as to the shares while they were still the shares of the company. But the power had, in fact, been capable of exercise by the company without offence against the rule that a company must not own its own shares. The matter was less clear as to the shares than as to the company's cash contributions, but, in his (his lordship's) opinion, the whole £78,303 should be regarded as a contribution within the meaning of s. 32 of the Finance Act, 1921, and the appeal must therefore be dismissed.

COUNSEL: *The Solicitor-General* (Sir Donald Somervell, K.C., M.P.) and *Hills*, for the Crown; *A. M. Latter*, K.C., and *Heyworth Talbot*, for the respondents.

SOLICITORS: *The Solicitor of Inland Revenue; Mayo, Elder & Rutherfords.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume.—Part II.

Societies.

Berks, Bucks and Oxfordshire Incorporated Law Society.

The Annual General Meeting of the Berks, Bucks and Oxfordshire Incorporated Law Society was held at the University, Reading, on Wednesday, 26th June, when the following members were present: Mr. S. E. Wilkins (President), Mr. H. C. Dryland (Vice-President), and Messrs. H. L. C. Barrett, H. R. Blaker, W. E. M. Blandy, S. Brain, R. P. Clarke, T. O. L. Hawthorne, H. Jordan, E. F. Kift, J. Moorwood, R. S. Payne, C. M. R. Peecock, F. J. Ratcliffe, J. B. Simmons, C. F. Schnadhorst, E. J. Winter, E. Woodward, and E. W. Brain (Secretary).

The minutes of the last Annual General Meeting having been approved and signed by the President, the Treasurer's statement of the accounts of the Society for the year ended the 25th March last was approved on the motion of Mr. E. J. Winter, seconded by Mr. R. S. Payne.

The President then submitted to the meeting the report of the committee for the past year. He referred to the presence at the meeting of Mr. H. R. Blaker, the President of The Law Society for 1934/35, whom, on behalf of the committee, he congratulated on the able way in which he had occupied the position of President during the past year. The President mentioned a number of the matters referred to in the report as having been dealt with by the committee, and in particular to the introduction during the past year of the scheme to combat the activities of legal aid societies which he said had already proved its usefulness. The President moved the adoption of the report, which was seconded by Mr. H. Jordan, and duly passed.

Mr. H. R. Blaker thanked the President for his kind words and said that although he had had an arduous time, he had much enjoyed his year as President of The Law Society. He referred to some of the matters which had been receiving the attention of the Council of The Law Society and indicated the lines on which it was proposed to deal with them.

The Secretary proposed, in accordance with notice, that a donation of £25 be made out of the Society's funds in the name of Mr. S. E. Wilkins, the President of the Society, to the Solicitors' Benevolent Association. The Secretary said that the donation was larger than usual as the committee felt that the King's Jubilee year should be marked with a special gift.

The Secretary also said that he would like to congratulate the President on the way in which he had carried out his duties during his year of office and for the help which he had given him personally in the matters dealt with during the past year. Mr. H. C. Dryland seconded the Secretary's motion which, on being put to the meeting, was unanimously carried.

The President next proposed that Mr. H. C. Dryland be elected President for the ensuing year, and said it was with the greatest pleasure that he put forward Mr. Dryland's name for election. He went on to say that nobody deserved the honour of being President more than Mr. Dryland, who had worked really hard for the good of the Society during the twenty-five years he was Secretary and Treasurer. In seconding the proposal, Mr. H. Jordan said the Society was greatly indebted to Mr. Dryland, and as a mark of their appreciation, could not do better than elect him as their President. The resolution, on being put to the meeting, was unanimously carried, and Mr. Dryland suitably responded.

Mr. J. B. Simmons, in proposing the election of Mr. J. C. B. Gamlen as Vice-President, said that although Mr. Gamlen had already been President for a year he felt that the Society would like to see him in that position again in order that he might have the opportunity of wearing the President's badge which he had so kindly presented to the Society. Mr. H. Jordan seconded the resolution, which was unanimously carried.

The President proposed the re-election of Mr. E. W. Brain as Secretary and Treasurer for the ensuing year, which resolution, on being seconded by Mr. H. C. Dryland and put to the meeting, was carried unanimously.

On consideration in accordance with notice of the question of the election of nine members of the Society to act as the committee for the ensuing year with the President, Vice-President and Secretary and Treasurer, Mr. E. F. Kift proposed and Mr. E. J. Winter seconded the following members: Messrs. H. L. C. Barrett, H. R. Blaker, R. P. Clarke, P. R. Darby, H. L. Franklin, J. Moorwood, F. J. Ratcliffe, S. E. Wilkins and E. Woodward. The resolution on being put to the meeting was unanimously carried.

On the proposition of Mr. S. Brain, seconded by Mr. C. F. Schnadhorst, it was resolved that the next annual general meeting be held at Oxford, but that the fixing of the date and place thereof be left to the committee.

On consideration in accordance with notice of the question of appointing a local committee of the Solicitors' Benevolent Association and a representative to serve on the standing council of such association, it was duly proposed and seconded and unanimously resolved that the Society's committee be appointed such local committee for the ensuing year and that the new President, Mr. H. C. Dryland, be appointed the Society's representative to the standing council for the same period.

On consideration of the question of the advisability of establishing a minimum scale for conveyancing in the Society's area, the Secretary reported the result of a meeting of representatives from Provincial Societies which had been held the previous month at Gloucester by invitation of the Gloucester Law Society. He read a copy of the resolutions passed at such meeting and said that the general view of Provincial Societies seemed to be in favour of the introduction of minimum scales having regard to the definition of touting and undercutting given by The Law Society. Mr. H. R. Blaker expressed The Law Society's views on the question of minimum scales and a general discussion of the matter followed in which several members spoke against the introduction of such a scale.

Mr. Dryland said he considered there were insufficient members present at the meeting to enable any decision to be reached on behalf of the Society as a whole, and he proposed that the Secretary be instructed to circularise all members in order to obtain their views on the matter. This proposition commended itself to members, and on being seconded by Mr. F. J. Ratcliffe and put to the meeting, was duly carried.

Mr. H. L. C. Barrett read a letter which had been received by his firm from the Slough Urban District Council respecting a scheme whereby solicitors might act in connection with the mortgage to the council of small dwelling-houses. Mr. Barrett said that the scale of fees allowed by the council was in his opinion inadequate, and he considered the matter was one to be dealt with by the Society if it thought fit to do so.

A discussion then took place during which Mr. R. P. Clarke expressed the view that he considered solicitors in private practice were fortunate to have the offer of doing the work when it might be done by the council's own salaried solicitor, and that in these circumstances he thought the scale should not be objected to. It was finally agreed to take no action in the matter.

The meeting closed with a vote of thanks to the retiring President.

Legal Notes and News.

Honours and Appointments.

His Majesty has been pleased to give directions for the appointment of Mr. PHILIP BERTIE PETRIDES, Chief Justice, Mauritius, to be Chief Justice of the Gold Coast, in succession to Sir George Campbell Deane, who will retire in December. Mr. Petrides was called to the Bar by the Middle Temple in 1906.

The Colonial Office announces the following appointments, promotions and transfers in the Colonial Legal Service: Mr. I. C. C. RIGBY, appointed Police Magistrate, Gambia; Mr. J. AITKEN (Puisne Judge, Supreme Court, Gold Coast), appointed Puisne Judge, Straits Settlements; Mr. L. R. ANDREWES (Assistant Crown Solicitor), appointed Deputy Registrar of the Supreme Court, Hong Kong; Mr. H. C. F. Cox (Solicitor-General), appointed Attorney-General, Nigeria; Mr. J. L. DEVAUX (Solicitor-General), appointed Attorney-General, Trinidad; Mr. T. M. Hazelrigg, M.C. (Registrar of the Supreme Court), appointed Crown Solicitor, Hong Kong; Mr. E. P. H. LANG (Deputy Registrar), appointed Registrar of the Supreme Court, Hong Kong; Mr. T. S. WHYTE-SMITH (Assistant Crown Solicitor), appointed Land Officer, Hong Kong.

Mr. J. L. EVANS, M.A., Assistant Solicitor to the Portsmouth Corporation, has been appointed Assistant Town Clerk of Dover in succession to Mr. S. R. H. Loxton, who is to succeed Mr. R. E. Knocker as Town Clerk. Mr. Evans was admitted a solicitor in 1934.

Professional Announcements.

(2s. per line.)

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 26th September, 1935.

	Div. Months.	Middle Price 11 Sept. 1935.	Flat Interest Yield.	‡Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	113	3 10 10	3 2 11
Consols 2½%	JAJO	83¾	2 19 8	—
War Loan 3½% 1952 or after	JD	105	3 6 8	3 2 4
Funding 4% Loan 1960-90	MN	116	3 9 0	3 1 4
Funding 3% Loan 1959-69	AO	101¼xd	2 19 3	2 18 7
Victory 4% Loan Av. life 23 years	MS	113	3 10 10	3 3 11
Conversion 5% Loan 1944-64	MN	120¼	4 3 2	2 3 11
Conversion 4½% Loan 1940-44	JJ	111	4 1 1	2 6 8
Conversion 3½% Loan 1961 or after	AO	104½	3 7 0	3 4 10
Conversion 3% Loan 1948-53	MS	103½	2 18 0	2 13 2
Conversion 2½% Loan 1944-49	AO	100½	2 9 9	2 8 8
Local Loans 3% Stock 1912 or after	JAJO	93¾	3 4 0	—
Bank Stock	AO	366½	3 5 6	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	85	3 4 8	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	94½	3 3 6	—
India 4½% 1950-55	MN	112	4 0 4	3 9 2
India 3½% 1931 or after	JAJO	93½	3 14 10	—
India 3% 1948 or after	JAJO	82½	3 12 9	—
Sudan 4½% 1939-73 Av. life 27 years	FA	119	3 15 8	3 8 3
Sudan 4% 1974 Red. in part after 1950	MN	115	3 9 7	2 15 4
Tanganyika 4% Guaranteed 1951-71	FA	114	3 10 2	2 16 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	111	4 1 1	2 12 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	109	3 13 5	3 7 6
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	103	3 12 10	3 9 3
Canada 4% 1953-58	MS	110	3 12 9	3 5 2
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
*New Zealand 3% 1945	AO	100	3 0 0	3 0 0
†Nigeria 4% 1963	AO	115	3 9 7	3 3 7
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 2
South Africa 3½% 1953-73	JD	108	3 4 10	2 18 4
*Victoria 3½% 1929-49	AO	99	3 10 8	3 11 10
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	96	3 2 6	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	107	3 5 5	2 19 5
Leeds 3% 1927 or after	JJ	95	3 3 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	107	3 5 5	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	81	3 1 9	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	94	3 3 10	—
Manchester 3% 1941 or after	FA	97	3 1 10	—
*Metropolitan Consd. 2½% 1920-49	MJSD	99½	2 10 3	2 10 10
Metropolitan Water Board 3% "A" 1963-2003	AO	99	3 0 7	3 0 8
Do. do. 3% "B" 1934-2003	MS	97	3 1 10	3 2 1
Do. do. 3% "E" 1953-73	JJ	101	2 19 5	2 18 7
†Middlesex County Council 4% 1952-72	MN	115	3 9 7	2 17 6
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 2 11
Nottingham 3% Irredeemable	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	107	3 5 5	3 3 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	113	3 10 10	—
Gt. Western Rly. 4½% Debenture	JJ	124½	3 12 3	—
Gt. Western Rly. 5% Debenture	JJ	134½	3 14 4	—
Gt. Western Rly. 5% Rent Charge	FA	132½	3 15 6	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	126½	3 19 1	—
Gt. Western Rly. 5% Preference	MA	114⅝	4 7 4	—
Southern Rly. 4% Debenture	JJ	112	3 11 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	112½	3 11 1	3 5 11
Southern Rly. 5% Guaranteed	MA	127½	3 18 5	—
Southern Rly. 5% Preference	MA	114½	4 7 4	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.